

Decision 05-08-038 August 25, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Rulemaking to implement the provisions of
Public Utilities Code § 761.3 enacted by
Chapter 19 of the 2001-02 Second Extraordinary
Legislative Session.

Rulemaking 02-11-039
(Filed November 21, 2002)

**FINAL OPINION REGARDING REMAINING ISSUES
AND TECHNICAL MODIFICATIONS TO GENERAL ORDER 167**

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**FINAL OPINION REGARDING REMAINING ISSUES
AND TECHNICAL MODIFICATIONS TO GENERAL ORDER 167**

1. Summary

The energy crisis of 2000-2001 resulted in substantial disruption, sacrifice, and economic hardship for the people and businesses of California. Among the causes, some electric powerplants were operated in questionable ways, or taken out of service for questionable reasons. This resulted in electricity power shortages and outages, danger to public health and safety, and dramatically increased prices. The California Legislature responded with Senate Bill (SB) X2 39 to ensure electrical system reliability and adequacy, and stabilize the market.¹

In SB X2 39, the people of the State of California found and declared that electric powerplants are essential facilities. They also found and declared that the public interest, health, and safety require that these essential facilities be operated and maintained effectively, appropriately, and efficiently. The legislation established the California Electricity Generation Facilities Standards Committee (Committee) to develop and adopt operation and maintenance standards, and charged the Commission with implementing and enforcing those standards. It directed that the Commission enforce California Independent System Operator (CAISO) protocols for the scheduling of powerplant outages. It also directed that certain data be filed on maintenance plans, outages, operational status, and availability.

¹ SB X2 39 (Burton and Spier), added by Statutes 2002, Second Extraordinary Session, Chapter 19, Section 4 (effective August 8, 2002). SB X2 39 repealed Pub. Util. Code § 342, amended § 362, and added § 761.3. All statutory references are to the Public Utilities Code unless noted otherwise.

The Commission responded by adopting General Order (GO) 167. As a result, we have implemented and are enforcing Committee-adopted Maintenance Standards, General Duty Standards for Operation and Maintenance (GDS-now incorporated in other standards), Logbook Standards for thermal powerplants, Logbook Standards for hydroelectric powerplants, and Operation Standards. We are also enforcing the CAISO powerplant Outage Coordination Protocol. (See Decision (D.) 04-05-017, D.04-05-018, D.04-12-049.)

Today's order completes this rulemaking. We make limited modifications to GO 167 based on recent comments from parties regarding data collection and common logbook format. We address other comments and issues. Finally, we establish a process to potentially employ alternative dispute resolution techniques for stakeholders to consider possible improvements to the adopted program. All identified issues are now resolved, and this proceeding is closed.

2. Background

Pub. Util. Code § 761.3 established the Committee for the purpose of adopting operation and maintenance standards for electric generation facilities. The Committee met nine times between December 2002 and October 2004, and adopted the following standards:

- a. Maintenance Standards on February 3, 2003;
- b. Logbook Standards (thermal) on April 1, 2003;
- c. General Duty Standards 1-3 on May 2, 2003;
- d. Revised General Duty Standards 1-6 on June 3, 2003;
- e. Logbook Standards (hydroelectric) on April 27, 2004; and
- f. Operation Standards on October 27, 2004.

The Committee completed its work in 2004, and, pursuant to law, expired on January 1, 2005. (§ 761.3(b)(3).)

Pub. Util. Code § 761.3 also directed that:

“...the commission shall implement and enforce standards adopted [by the Committee] for the maintenance and operation of facilities for the generation of electric energy owned by an electrical corporation or located in the state to ensure their reliable operation. The commission shall enforce the protocols for the scheduling of powerplant outages of the Independent System Operator.” (§ 761.3(a).)

We fulfill these responsibilities through GO 167. (See D.04-05-017, D.04-05-018, D.04-12-049.) Most recently, we included Operation Standards in GO 167, and kept this proceeding open for two limited purposes: (1) to address any issues stated in the Scoping Memos² that had not yet been decided, and (2) to assess whether or not any further technical modifications were needed to GO 167. (D.04-12-049, *mimeo.*, page 44 and Ordering Paragraph 6.)

The Assigned Commissioner and Administrative Law Judge (ALJ) jointly issued a ruling seeking comments on remaining issues and possible technical modifications. (Ruling dated March 17, 2005.) The ruling included an attachment that preliminarily concluded no issues remain, and one minor technical modification might be made.

Timely comments were filed and served on April 1, 2005 by:

² The Scoping Memo dated February 19, 2003 established three phases to address implementation and enforcement of maintenance standards, operation standards, logbook requirements, outage protocols, and other related items. The Scoping Memo dated May 2, 2003 established a fourth phase to address implementation and enforcement of the GDS.

- a. Pacific Gas and Electric Company (PG&E);
- b. Southern California Edison Company (SCE);
- c. Indicated Generating Asset Owners (Indicated GAOs, composed of Calpine Corporation, Duke Energy North America,³ GWF Energy LLC and High Desert Power Project LLC);
- d. Joint comments by AES Alamitos, LLC, AES Huntington Beach, LLC, and AES Redondo Beach, LLC (AES); Reliant Energy Coolwater, Inc., Reliant Energy Etiwanda, Inc., Reliant Energy Mandalay, Inc., and Reliant Energy Ormond Beach, Inc. (Reliant); and Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, and Long Beach Generation LLC, (West Coast Power or WCP⁴); and
- e. Elk Hills Power, LLC (Elk Hills).

No reply comments were filed.

The joint ruling also set a prehearing conference (PHC) for April 12, 2005. The PHC was called to discuss possible future process on these matters. In particular, views were heard on possible use of alternative dispute resolution methods in the form of mediation to explore preventative conflict resolution and incremental program improvements within the regulatory structure adopted in GO 167.

The matter was submitted for Commission decision on May 2, 2005. On May 5, 2005, the Western Power Trading Forum (WPTF), in accordance with the guidance provided in D.04-05-017, served the following document: "Report on

³ On behalf of Duke Oakland, LLC; Duke Energy Moss Landing, LLC; Duke Energy Morro Bay, LLC; and Duke Energy South Bay, LLC.

⁴ WCP's filed comments state that WCP is a partnership equally owned by subsidiaries of Dynegy Power Corp. and NRG West Coast LLC.

Behalf of Certain Generation Owners in California, Regarding the CPUC Common Format for Thermal Power Plant Logbooks.” By ruling dated May 12, 2005, submission was set aside for further comment on a common logbook format, along with possible modification of Ordering Paragraph 4 of D.04-05-017 (which had directed the filing of an application regarding the common logbook format). Comments were filed on May 23, 2005 by PG&E, Indicated GAOs, Elk Hills, La Paloma Generating Company (La Paloma), and the Commission’s Consumer Protection and Safety Division (CPSD). Reply comments were filed on May 31, 2005 by Indicated GAOs. The matter was resubmitted for Commission decision on May 31, 2005.

3. Remaining Issues

Parties’ comments generally identify seven items for further consideration or completion. We examine and resolve these matters below.

3.1. Data From Nuclear Powerplants and Qualifying Facilities

PG&E and SCE correctly point out that § 761.3(d) requires the filing of certain information on the maintenance plans, outages, operational status, and availability of nuclear powered generation facilities and qualifying facilities (QFs). Currently, however, GO 167 neither specifies the necessary data nor establishes reporting cycles. PG&E and SCE recommend that the Commission obtain the necessary information on nuclear facilities from the CAISO, and convene a workshop to address and resolve issues regarding information on QFs.

For the reasons explained below, we modify GO 167 to include data requirements for nuclear powerplants and QFs. In particular, we add two sections to GO 167 as shown in Attachment A: § 10.3.5 for nuclear facilities and

§ 10.3.6 for QFs. With respect to QF data, we adopt a process which will sufficiently differentiate the data to be filed by electrical corporations and that to be filed by the QFs, and thereby need not order a workshop.

3.1.1. Nuclear Facilities

Annual maintenance information must be filed by the owner or operator of a nuclear powered generation facility with the Oversight Board and Commission, and updated quarterly. Monthly outage information must be reported to the Oversight Board and Commission, and updated monthly. Daily operational and availability information must be reported to the Oversight Board and the CAISO. (§§ 761.3(d)(1)(B) and (C); see Attachment B.)

PG&E and SCE state that they are providing the information required by § 761.3(d)(1) via reports to the CAISO. They recommend that the Commission obtain the necessary information from the CAISO, using the provision in GO 167 that allows sharing of information between government entities. (GO 167, § 10.2.) In the alternative, SCE proposes that the Commission permit utilities to fulfill the obligations of § 761.3(d)(1) by providing copies of the relevant reports to the Commission when filed with the CAISO.

We adopt SCE's alternative recommendation for the following reasons. The information sharing provision in GO 167 requires that CPSD request PG&E and SCE to in turn authorize the CAISO to release certain information to the Commission.⁵ This is a two-step process that results in placing a requirement

⁵ The relevant part of GO 167 § 10.2 is: "Upon CPSD's request, a Generating Asset Owner shall authorize governmental agencies to release and provide directly to CPSD any information in that agency's or entity's possession regarding the operation or maintenance of that Generating Asset Owner's Generating Asset." GO 167 § 2.2

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upon the CAISO. No compelling reason is known why PG&E and SCE cannot provide the information directly to CPSD. Doing so is reasonably simple and direct, does not place a burden on CAISO, and can be done at the same time the data is given to the CAISO. Further, this is more in line with the responsibilities under § 761.3(d) (1), wherein the reporting duties are those of the owner or operator of the facility, not the CAISO.

In addition, PG&E and SCE assert that some of the information is confidential. By giving the data directly to CPSD, PG&E and SCE can clearly identify the data each utility believes is protected from disclosure pursuant to the terms of GO 167 without expecting CAISO to do so. This properly keeps the burden on the entity submitting the data to assert and support any claim of confidentiality.

We set a specific date for the first annual maintenance report, and the subsequent quarterly cycle for updates, which we align with the cycle used by the CAISO.⁶ Similarly, we set a specific date for the first and subsequent monthly outage reports, which we seek to align with information submitted by each utility to the CAISO. To the extent the CAISO has not set a specific date for the monthly reports, we adopt one here.

We expect the owner or operator of a nuclear generation facility to provide the same information to CPSD that is provided to CAISO. Since our

provides in relevant part: “For purposes of information-sharing under this General Order, ISO is considered to be a governmental agency.”

⁶ See §§ 2.2.1 and 2.2.2 of the CAISO Outage Coordination Protocol. The Protocol may be found as Part 14 of the Conformed Tariff at:
<http://www.caiso.com/docs/2005/02/17/20050217120830218.html>.

understanding is that this information will be the same, our only additional qualification is that if for any reason it is different, we require the filing to clearly indicate that it is different than that given to the CAISO, along with a brief summary of the differences. To the extent the CAISO has not stated a format for the monthly outage report, PG&E and SCE may employ their own format, subject to later modification if specified by CAISO or CPSD for future filings.

We include reporting requirements regarding data to be provided to entities other than the Commission (i.e., Oversight Board and CAISO) and on other reporting cycles (e.g., daily), just as GO 167 already requires GAOs to make certain reports to the CAISO.⁷ We do this to fully implement § 761.3, given that the requirements in § 761.3 are interrelated within California's complex hybrid electric utility industry. We do not specify the details of filings with the Oversight Board or CAISO but, as we have done before, we leave those matters to the Oversight Board and CAISO. We seek to employ reasonable cooperation by adopting existing formats and reporting dates to the fullest extent feasible in order to moderate the burden on all stakeholders.

Finally, SCE points out that the Oversight Board oversees the CAISO and has authority to inspect the CAISO's records and documents. The implication is that nothing needs to be filed separately with the Oversight Board if and when it is filed with CAISO. We leave that up to GAOs to work out with the Oversight Board and CAISO as necessary.

⁷ See, for example, GO 167 § 10.3.1, which involves GAO monthly reports to the CAISO as specified in § 761.3(g).

3.1.2. Qualifying Facilities

Certain information on QF maintenance schedules, outages, daily operational status, and availability must be filed. (§ 761.3(d)(2)(B); see Attachment B.) The data is to be filed by an electrical corporation with the Oversight Board and the Commission when the electrical corporation has a contract with a QF and the information is provided to the electrical corporation pursuant to a contract. The data is to be filed by the QF with the Oversight Board and CAISO if the information is not provided to the electrical corporation pursuant to a contract.

PG&E and SCE state that there is not a clean fit between the data reported pursuant to QF contracts, and the information required here on maintenance schedules, outages, daily operational status, and availability. In addition, they point out that § 761.3(d)(2) does not state the reporting cycle (e.g., daily, monthly, quarterly, semi-annually, annually). PG&E and SCE recommend a Commission-sponsored workshop to identify the information utilities are and are not entitled to under contract, and the schedule for reporting this information, with representatives from utilities, QFs, CAISO, and the Oversight Board invited to attend.

We recognize the difficulties identified by PG&E and SCE. These difficulties, however, can be overcome by adopting a streamlined approach which will sufficiently differentiate who must file data with whom, and when.

3.1.2.1. Streamlined Approach

We do this by requiring each electrical corporation to file a report annually with CPSD, the Oversight Board, and CAISO. The report will list the QFs with whom the electrical corporation had a contract for part or all of the prior calendar year. Further, the list will identify whether or not the specified

information, in the view of the electrical corporation, was provided by the QF to the electrical corporation pursuant to a contract. If so, the electrical corporation shall provide the specified information with its report. If not, the reporting obligation transfers to the QF, and the QF must file the data with the Oversight Board and CAISO.⁸

We require that the electrical corporation file this annual report not only with CPSD but also with the Oversight Board and CAISO. In this way the Oversight Board and CAISO know whether or not they should expect data to be filed by the QF pursuant to § 761.3(d). We also require that the electrical corporation serve its annual report on each QF which the electrical corporation determines did not provide the specified information pursuant to contract. The electrical corporation should include a cover letter with the annual report stating that the QF should provide the data directly to the Oversight Board and CAISO pursuant to Pub. Util. Code § 761.3(d)(2)(B). In this way the QF is informed of the QF's reporting obligation, and put on notice that it must seek to resolve any misunderstanding or disagreement with the electrical corporation about whether or not the QF already provided the specified information to the electrical corporation pursuant to a contract.⁹

⁸ If the QF disagrees with the determination of the electrical corporation, the QF may pursue the matter with the electrical corporation (e.g., show the electrical corporation under what contract provision the information was provided, and submit another copy of the data to the electrical corporation). Electrical corporations and QFs are responsible entities. We believe they will be able to resolve misunderstandings or disagreements, and determine which entity has the reporting obligation.

⁹ When the electrical corporation concludes "that information is not provided to the electrical corporation pursuant to a contract" (§ 761.3(d)(2)(B)), the reporting duty transfers to the QF. The Commission, Oversight Board and CAISO may reasonably

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3.1.2.2. Reporting Cycle, Format, and Requirements

No party proposes a particular reporting cycle. We adopt an annual cycle beginning March 31, 2006. This is a reasonable timeframe for data collection without being unreasonably burdensome. We may order a different cycle upon a showing that it should be shortened or lengthened, or filed on a different date.

Similar to our approach above, we do not specify the format for the data. Rather, each electrical corporation may use the format that it finds most reasonable. CPSD, the Oversight Board or CAISO may in the future, if and as necessary, specify a useful and reasonable format. Alternatively, we may in the future specify a format upon a showing that one is necessary.

Also, as we do above and for the same reasons, we include reporting requirements here regarding data to be provided to entities other than the Commission (i.e., the Oversight Board and CAISO). Further, we leave it up to GAOs to determine with the Oversight Board and CAISO whether or not reports are to be filed with the Oversight Board or CAISO, or both.

3.1.2.3. Reasonableness of Adopted Approach

Indicated GAOs are concerned that the adopted approach allows the utility to unilaterally determine who must report the data, and impose additional costs and obligations on the QF. To the contrary, the QF has the obligation to report data pursuant to § 761.3(d)(2)(B). The only issue is whether it is reported by the QF (a) to the electrical corporation pursuant to a contract (with the

infer that failure by the QF to initiate timely resolution of the matter with the electrical corporation directly (e.g., within 30 days of notice) would mean that the QF does not dispute the electrical corporation's determination.

electrical corporation then in turn reporting it to the Commission and the Oversight Board) or (b) directly to the Oversight Board and the CAISO.

Despite the concerns of Indicated GAOs, we reaffirm our confidence in electrical corporations and QFs being responsible entities reasonably able to resolve disagreements about this reporting duty. In the rare case in which they are unable to do so, we believe they may have mechanisms available to resolve contract disputes (e.g., contracts may contain a mandatory arbitration clause or other dispute resolution mechanism; parties might hire an independent mediator).

An electrical corporation and QF might also refer the dispute to the Commission, Oversight Board, or CAISO for informal or formal adjudication. For example, the electrical corporation and QF may contact CPSD, Oversight Board or CAISO to seek an informal resolution. Alternatively, a Commission proceeding might be initiated if CPSD or another entity (e.g., QF) brings a formal action against an electrical corporation for failure to file certain data pursuant to GO 167, § 10.3.6. The Commission will then make a formal determination whether the obligation is or is not that of the electrical corporation.

Indicated GAOs also express concern regarding reporting duties during resolution of a contract dispute, and suggest that those responsibilities be suspended while the dispute is pending. We note that such dispute, if any, should only happen once for the report due March 31, 2006.¹⁰ There are approximately seven months before the first report is due on March 31, 2006. We

¹⁰ After March 31, 2006, existing and new QFs should be able to clarify the obligation sufficiently before March 31, 2007, to prevent a dispute on the date the second report is due.

encourage electrical corporations and QFs to begin discussions now regarding who has the reporting obligation.

To facilitate that discussion, we require each electrical corporation to send a preliminary report by November 1, 2005 (i.e., in about 2 months) to each affected QF, plus serve a copy on CPSD, the Oversight Board, and the CAISO. The preliminary report will state whether the electrical corporation believes it will be able to supply the report to the Commission and Oversight Board on March 31, 2006, or whether it believes the report must be submitted by the QF directly to the Oversight Board and the CAISO. In the case of dispute, this will give each QF about five months to point out the contract provision under which it provides the data to the electrical corporation and submit a replacement set of data, if necessary. It also allows a reasonable amount of time for parties to resolve any other dispute regarding this reporting obligation.¹¹

Finally, Indicated GAOs and the Independent Energy Producers Association (IEP) are concerned that QFs simply do not collect the data required by § 761.3(d)(2)(B). If true, it is obviously not provided to the electrical corporation pursuant to contract, and, therefore, the electrical corporation does not have a reporting duty under GO 167 § 10.3.6. Similarly, if true, we think the Oversight Board and CAISO are likely to take this into account regarding data the QF must report directly to those entities pursuant to § 761.3(d)(2)(B). On the

¹¹ The report might be as simple as a table listing all QFs under contract to the electrical corporation, with an adjoining column. The column could identify whether or not the electrical corporation believes it will be able to supply the report to the Commission and the Oversight Board on March 31, 2006, or whether the electrical corporation believes the QF must supply the report to the Oversight Board and CAISO. Other simple approaches may similarly accomplish the task.

other hand, it seems unlikely that a QF by March 31 of each year would be unable to know and report for the prior calendar year its actual planned maintenance, experienced unplanned outages, plus actual daily operational status and availability. If truly unknown, however, we suppose that the QF can report that, and the Commission, Oversight Board and/or CAISO can determine what, if anything, to do, as appropriate.

3.1.3. Effective Date

We make a minor change to GO 167 § 15.12 to clarify the effective date. (See Attachment A.) In particular, we specify that these changes are effective three days after this decision is mailed, as we have done with prior orders.

3.2. Operation Plan Summary and Role of Guidelines

Indicated GAOs are concerned about CPSD's use of Guidelines in CPSD's recently proposed Operation Plan Summary. If CPSD's proposal is adopted, Indicated GAOs believe GAOs may be required to do additional substantive work completing the Operation Plan Summary above and beyond the work already undertaken developing their individual Operation Plans. They believe this would conflict with the significant discretion regarding use of Guidelines given GAOs in D.04-12-049. AES, Reliant, and WCP share this concern, recommending that the Commission "consider addressing this issue again so that all concerned are completely clear about the role of guidelines." (Comments dated April 1, 2005, page 6.)

Indicated GAOs, AES, Reliant, and WCP reargue positions already adequately addressed in D.04-12-049. We are not persuaded that any further clarification or changes are necessary.

Specifically regarding the Operation Plan Summary, GAOs filed and served a proposal on January 18, 2005, consistent with our adopted process.

(D.04-12-049, Ordering Paragraph 2.) CPSD made an alternative proposal on March 11, 2005. A workshop was held on April 6, 2005. GAOs submitted written comments on CPSD's proposal to CPSD on April 25, 2005. We have delegated the decision to the Executive Director, and have no reason to change our guidance:

“The Executive Director should employ all reasonable and feasible suggestions of GAOs to moderate the burden on GAOs while meeting the Commission's need to have information in a usable form so that the Commission may fulfill its duties.” (D.04-12-049, *mimeo.*, p. 22.)

We are confident that this process will yield a reasonable outcome. After this process is completed, GAOs may, if necessary, seek further consideration:

“If presented to us for consideration [e.g., petition for modification], we may in a future amendment to the GO be more specific about the level of detail, format and content elements for the Operation Plan Summary.” (D.04-12-049, *mimeo.*, p. 23.)

3.3. Common Logbook Format

In May 2004, we declined to adopt a common logbook format for thermal powerplants, but decided to reassess the issue again one year later. (D.04-05-017, *mimeo.*, pp. 28-31 and OP 4.) We expected the proceeding to be closed by May 2005, but said that “an application by a respondent is an efficient procedural vehicle for further consideration of this matter after R.02-11-039 is closed.” (*Id.*, p. 30, footnote 26.)

This proceeding, however, was not closed by May 2005. On May 5, 2005, WPTF served a report regarding a common logbook format. In general, the report recommends that the Commission not adopt a common logbook format for thermal powerplants. By ruling dated May 12, 2005, dates were set for

parties to comment on the WPTF report, plus whether or not to modify the order that a respondent file an application.

In their comments, parties generally support the report's conclusions. We agree to the extent that we do not adopt a common logbook format.

CPSD states that there is no need for the Commission to adopt a common format as such, but recommends focusing on the methods GAOs use to enter and store data. In particular, CPSD recommends a three-year period for GAOs to phase-in electronic database systems for logbooks. We largely agree.

Many, if not all, GAOs will update logbook systems over time. Many, if not all, of those updates will be from paper to electronic database systems, or from electronic to improved electronic database systems. Updates, however, can be expensive and disruptive (e.g., costs of hardware, software, training.). As a result, we do not require that existing logbook systems be updated now, or even in three years.

Nonetheless, we expect the majority of logbook systems to be upgraded over time. When updated to include electronic database systems, we require that those systems meet the following minimum requirements recommended by CPSD: (a) they must be electronically searchable and (b) they must be secure (i.e., changes are tracked and documented). We make this clear by adding electronic database minimum requirements in a new § 5.7. We also require powerplants now in the planning stage, and all future powerplants, which are 50 megawatts or larger to employ electronic database systems for maintaining plant logs.¹² We include this requirement in new § 5.7.

¹² See CPSD comments dated August 11, 2005. No party stated an objection or concern in reply comments filed and served on August 16, 2005.

CPSD notes that electronic database systems permit storage and reporting in a reasonable range of formats, and suggests this be a minimum requirement. We need not add this, however, since this is an attribute of electronic database systems. Further, this requirement (whether or not in a database system) is already stated in GO 167 and need not be repeated. That is, GO 167 requires that a GAO provide information to CPSD upon request. (GO 167, § 10.1.) This includes logbooks, or portions thereof. Further, “if CPSD has indicated when, where and in what form the information is to be provided, the GAO will provide the information in that manner and will otherwise cooperate with CPSD in the provision of information.” (GO 167, § 10.1.) This permits CPSD to request the data in a useful form and format.

CPSD also recommends that each GAO be required to keep a record of employees who act as database administrators at each plant, along with the time period they were administrator. CPSD says in this way its investigators will be able to follow up with the responsible person if there are discrepancies or undocumented changes.

This is largely already a GO 167 requirement, and we are not persuaded more is necessary. That is, GO 167 (including logbook standards in GO 167, Appendix B) provides adequate ability and authority for CPSD to gather necessary information about plant operation, including names of responsible personnel.¹³ (GO 167, §§ 10.1 and 11.1.) Moreover, CPSD can compel interviews

¹³ For example, Thermal Logbook Standards require that the “first entry in the Control Operator Log at the start of a shift shall identify each operator on that shift and by some regular means distinguish his/her responsibilities (list in a regular order the identity of the Shift Supervisor(s), Control Operator(s), Assistant Control Operator(s), and Plant Equipment Operator(s)) ... Significant entries will include the control operator’s name

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and testimony under oath by employees concerning logbooks. (GO 167, § 11.2.) This may include database administrators.

We are not persuaded that the name of the computer administrator will be lost unless logged as recommended by CPSD. Rather, we expect employee names to be available as part of a company's regular recordkeeping. Thus, we think a separate requirement is unnecessary.

Finally, parties were asked whether or not the order should be modified requiring a respondent to file an application. (OP 4 of D.04-05-017.) Parties unanimously support modification, noting that compliance is satisfied by the WPTF report. We agree, but conclude that we need not modify our prior order. Rather, we simply note here that because this proceeding was still open in May 2005, the report served by WPTF on May 5, 2005 satisfies the intention in Ordering Paragraph 4 of D.04-05-017, and nothing further is required of respondents.

3.4. Operation Standard 22

Indicated GAOs argue that Operation Standard (OS) 22 should only apply to facilities that have commercial arrangements or other mechanisms that provide compensation. At a minimum, according to Indicated GAOs, the ratemaking caveat in OS 24 should also apply to OS 22.¹⁴

at the end of the entry preceded by the name(s) of others involved in the activity.” (Thermal Logbook Standards, D.04-05-017, Attachment A, page 4.)

¹⁴ OS 22 is “OS 22 - Readiness: Until a change in a unit's long-term status, except during necessary maintenance or forced outages, the GAO is prepared to operate the unit at full available power if the Control Area Operator so requests, after reasonable notice, when such operation is permitted by law and regulation. Among other things, the GAO: (a) maintains contingency plans to secure necessary personnel, fuel, and

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We are not persuaded that OS 22 needs modification. As we have said: “The Commission is not regulating economic decisions. The Commission is implementing and enforcing operation and maintenance standards, a matter that is within our jurisdiction.” (D.04-12-049, *mimeo.*, p. 41.)

OS 22 involves readiness. It requires that, absent a change in a unit’s long-term status and subject to certain conditions, the GAO remains prepared to operate at full power if requested by the Control Area Operator. If a GAO decides not to maintain a unit in a ready state in conformance with OS 22, that decision involves a change in long-term status. This invokes OS 24, and OS 24 adequately addresses compensation.

In comments on the draft decision, Indicated GAOs point out a GAO may make a short-term decision not to have the plant participate in the market and thereby not be “ready” as required by OS 22. On the other hand, Indicated GAOs say a change in long-term plant status pursuant to OS 24 would be a decision to retire or moth-ball a facility, not the type of temporary unavailability that is based on a decision whether or not to participate in the market. Thus, OS 22 should be modified consistent with its previous recommendation, according to Indicated GAOs, to obligate readiness only where there is an

supplies, and (b) prepares facilities for reasonably anticipated severe weather conditions.”

OS 24 is “OS 24 – Approval of Changes in Long-Term Status of a Unit: The GAO maintains a unit in readiness for service in conformance with Standard 22 unless the Commission, after consultation with the Control Area Operator, affirmatively declares that a generation facility is unneeded during a specified period of time. This standard is applicable only to the extent that the regulatory body with relevant ratemaking authority has instituted a mechanism to compensate the GAO for readiness services provided.”

existing commercial arrangement, or subject to another mechanism to provide compensation, such as in OS 24.

We decline to modify OS 22 for four reasons. First, we are not presented with any compelling information that a short-term decision whether or not to participate in the market significantly affects a facility's readiness. To the contrary, as an economic matter the owner of a facility may decline to offer the facility to the market in the short-term, but—until the facility is retired—the owner must have the plant ready for participation over the long-term (i.e., when the short-term nonparticipation decision is reversed).

Second, readiness under OS 22 is predicated upon a request by the Control Area Operator “after reasonable notice.” Even after reasonable notice, the guideline for implementing and enforcing OS 22 provides that the facility may use “normal start-up procedures,” and a facility operated seasonally might not reach full readiness for up to two weeks.¹⁵ This is not necessarily the type of “readiness” that requires conditioning OS 22 on an existing commercial arrangement or other specific cost recovery mechanism.

Third, we have no information that compensation arrangements, even without a specific or separately paid “readiness premium,” fail to include adequate compensation for a facility to maintain reasonable readiness. That is,

¹⁵ OS 22 Guideline C states: “Except during necessary forced or planned outages or when a change in long-term plant status has been granted under Standard 24, the GAO can produce full available power with no more delay than is necessary to conduct normal start-up procedures. A unit that is expected to operate only seasonally should specify in its Unit Plan how much notice will be required to reach full readiness under this standard; however, this notice period should not exceed two weeks.” (D.04-12-049, Attachment 3, page 38 of 101.)

rates may already include compensation for reasonable readiness, including occasional periods of non-operation or absence of commercial arrangements. In fact, an efficient and stable market may require such compensation. We are involved here, however, with operation standards, not ratemaking. The Committee adopted operation standards, including OS 22, for California's essential electric generating facilities in order to maintain and protect public health and safety, and to ensure electric service reliability and adequacy. We are not persuaded that implementation and enforcement of OS 22 requires that it be conditioned on the existence of a commercial commitment, or other compensation, beyond what already may be in wholesale rates. We are not authorized "to establish rates for wholesale sales in interstate commerce." (§ 761.3(c).) We implement and enforce reasonable operation and maintenance standards, including OS 22 as adopted by the Committee. We leave ratemaking matters for wholesale sales in interstate commerce to the Federal Energy Regulatory Commission (FERC).

Finally, comments on a draft decision must focus on factual, legal or technical errors, and comments which reargue positions are accorded no weight. (Rule 77.3 of the Commission's Rules of Practice and Procedure.) This comment of Indicated GAOs reargues positions already argued, and is given no weight. Thus, we decline to modify the draft decision as requested by Indicated GAOs.

3.5. Jurisdiction

Regarding remaining issues, AES, Reliant, and WCP say that:

"The most important question that remains unanswered is the issue that has loomed over this proceeding from the outset: whether or not the Commission has jurisdiction over facilities that are Exempt Wholesale Generator ("EWGs") under federal law." (Comments dated April 1, 2005, page 2.)

We have addressed jurisdiction at length. (See, for example, D.04-05-017, *mimeo.*, pp. 5-21; D.04-05-018, *mimeo.*, pp. 6-11 and 16-21; D.04-12-049, *mimeo.*, pp. 36-43.) In fact, AES, Reliant, and WCP acknowledge that we have discussed this issue in several decisions, but that applications for rehearing are pending and the issue may not be finally resolved for several years. They raise nothing new here that justifies keeping the fact and policy-collecting portion of this proceeding open regarding jurisdiction. We will determine our future course of action, if any, on jurisdictional issues in the decision on the applications for rehearing.

3.6. Enforcement

AES, Reliant, and WCP claim that GO 167 discusses only the broad outlines of enforcement of standards. They state that:

“Nowhere in the GO or in the Commission’s decisions is there a clear roadmap of how the Commission’s enforcement efforts will proceed, or a clear description of when and whether audits or inspections will lead to some sort of formal or informal proceeding, how the Commission will determine whether violations of the standards have occurred, or how a GAO may ask the Commission to adjudicate CPSD’s assessment of a fine.” (Comments dated April 1, 2005, pp. 6-7.)

We do not agree. GO 167 is a 54-page order that is sufficiently thorough in stating our implementation and enforcement protocols. It is further explained by discussion in several orders.

In short, our approach involves a graduated process that begins with self-certification. The self-certification procedures and deadlines are adequately and sufficiently explained in GO 167. The process may proceed to audits and inspections. It may escalate to the initiation of formal proceedings, hearings, and

briefs. It may ultimately result in a Commission decision that may or may not include assessment of a fine.

We have delegated some ministerial actions to CPSD. Despite their claim to the contrary, we have been sufficiently specific on how a GAO may ask the Commission to adjudicate CPSD's assessment of a fine. In particular, we specify that a GAO must contest a fine within 30 days. (GO 167, § 13.3.4.) Once contested, the matter does not proceed unless CPSD or the Commission brings a formal inquiry or action.

If a formal matter is brought (e.g., pursuant to a GAO contesting a ministerial action, pursuant to an audit by CPSD), the GAO has all the attendant safeguards within normal Commission process for formal matters (e.g., right to object to discovery, examine or cross-examine witnesses on issues of material fact, make motions, present argument on the law, appeal a Commission decision). The document that initiates a formal matter (e.g., Order Instituting Investigation, Order to Show Cause) will adequately state the basis, and nothing further needs to be included in GO 167.

AES, Reliant, and WCP make no specific recommendations for our consideration regarding additional clarity in stating the roadmap, and we are not persuaded that any changes are necessary. Rather, the graduated process stated in GO 167 is the roadmap, and is reasonably and adequately presented.

According to AES, Reliant, and WCP, SB X2 39 instructs the Commission to:

“seek enforcement capability from the Federal Energy Regulatory Commission [“FERC”] regarding the private generator agreement to provide for broader state control of operational activities of generation facilities in the state.” (Comments dated April, 1, 2005, p. 7.)

AES, Reliant, and WCP assert that the Commission should have been, and should be, more vigorous in our efforts to seek enforcement capability through FERC. We are not persuaded.

We have carefully considered our authority and responsibilities under state and federal law. (See, for example, D.04-05-017, *mimeo.*, pp. 5-21; D.04-05-018, *mimeo.*, pp. 6-11 and 16-21; D.04-12-049, *mimeo.*, pp. 36-43.) We considered other approaches, and adopted an approach which fulfills our substantial responsibilities to protect public health and safety within California. We do so “in a spirit of cooperation and comity,” with others, but do not “concede or limit any authority of the State of California, either directly or indirectly.” (D.04-05-018, *mimeo.*, pp. 20-21.) We are confident that our adopted approach properly implements our responsibilities, follows legislative instructions, and is in the public interest.

3.7. Confidentiality

AES, Reliant, and WCP identify confidentiality as an issue not fully resolved and in need of further consideration. They urge revising GO 167 to provide that communications made during audits and inspections (a) be protected from public disclosure, (b) not be used against an employee or a GAO, and (c) not be entered into evidence in a formal proceeding. In support, they contend the public interest is advanced when all communications made during audits and inspections are protected from public disclosure. According to AES, Reliant, and WCP, this will allow employees to be candid with CPSD inspectors, competitively sensitive information to be protected, and a GAO or employee to avoid unknowingly waiving a privilege against self-incrimination while being cooperative with Commission staff.

While these may be reasonable arguments in support of a blanket rule requiring all such communication to be protected from public disclosure, AES, Reliant, and WCP also acknowledge that public policy, as stated in the Public Records Act, generally requires information provided to state agencies to be made available to the public. (Comments dated April 1, 2005, at p. 9, citing Government Code § 6250.) A recent amendment to the California Constitution further emphasizes the need for agencies to provide information to the public.¹⁶

There is a tension between protection and disclosure of information. We have adequately addressed confidentiality in prior orders, and have reached the proper balance. (D.04-05-018, *mimeo.*, pp. 38-40.) We have adequately addressed communication by an employee or GAO, including that GO 167 does not “override any constitutional or statutory privilege that may be properly invoked by the examined person.” (D.04-12-049, *mimeo.*, p. 34, referring to D.04-05-018, *mimeo.*, p. 36.)

Importantly, we also note that:

“Any person who ... transacts business with the Commission ... agrees to ... never mislead the Commission or its staff by an artifice or false statement of fact or law.” (Rule 1 of the Commission’s Rules of Practice and Procedure.)

Every person involved with any aspect of the Commission’s business, including a GAO employee responding to a CPSD inspector, must at all times

¹⁶ Article 1, § 3 of the California Constitution, amended by passage of Proposition 59 (Stats. 2004, Res. c. 1 (S.C.A. 1)) in an election held on November 2, 2004. The amendment became effective the day after the election pursuant to California Constitution Article 2, § 10 and Article 18, § 4.

comply with Rule 1. With respect to being candid, we have said of public utilities that:

“Withholding of ... information or lack of complete candor with the Commission ... would of course result in severe consequences for any public utility.” (D.93-05-020, 49 CPUC 2d 241, 243.)

This is equally true for GAOs and GAO employees, given the important and serious public health and safety matters at stake and the Legislature’s finding that “electric generating facilities in California are essential facilities ... ” (SBX2 39, § 1(a).) Thus, we decline to modify GO 167 as recommended.

We also decline to adopt a general rule regarding the admissibility of communications made during audits and inspections as evidence in a formal proceeding. AES, Reliant, and WCP assert that CPSD can make its case by using information CPSD obtains from other sources or develops during the enforcement process. We disagree that such conclusion can, or should, be drawn now. We decline to adopt a general rule, and leave such determinations to the facts and laws presented in a specific proceeding.

4. Technical Modifications

The March 17, 2005 ruling asked parties to comment on one potential technical modification. That modification involved changing the title to GO 167 to make it shorter and employ a more parallel use of terms. No party commented. Absent support for a change, we conclude that the current title is sufficiently comprehensive and useful to stakeholders that no change is warranted.

The ruling also asked parties to identify other possible technical modifications, or a process for considering further technical modifications. AES,

Reliant, and WCP identify several such modifications and recommend an additional 20 days for comments, and 10 days for reply comments.

We decline to establish an additional comment cycle. No other party supported the need for an additional round of 20 and 10 days for more pleadings, and we are not convinced any is needed.

Further, no party offered reply comments on the specific modifications and subject areas proposed by AES, Reliant, and WCP. We conclude that parties have had adequate opportunity to comment, and have said all they wish to say.

The proposals of AES, Reliant, and WCP fall into two categories. We address each below.

4.1. Section 4 (General Duty Standards)

First, AES, Reliant, and WCP recommend that GO 167 § 4 (General Duty Standards) “may now be deleted.” (Comments dated April 1, 2005, p. 11.) We decline to do so.

AES, Reliant, and WCP are right that the GDS have been superseded by incorporation as appropriate in Maintenance Standards, Operation Standards, Logbook Standards (Thermal), and Logbook Standards (Hydroelectric Energy). Nonetheless, to delete GO 167 § 4 would require a wholesale renumbering of the GO and Appendices.¹⁷ This would be disruptive to stakeholders given recent and current substantial efforts to initiate activities under this new GO, including

¹⁷ For example, it would require deleting GO 167 § 2.7, § 4.0 and Appendix A. It would require renumbering §§ 5 through 15, and Appendices B through F. It would require changing the references within the GO to the updated sections and appendices (e.g., references found within, but not necessarily limited to §§ 2.13, 2.14, 2.15, 2.17, 2.20, 3.3, 3.4, 3.5, 5.2, 5.3.3, 7.2.2, 7.2.4.1, 7.2.4.2, 7.3.2.2, 7.4, 8.2.2, 8.2.4.1, 8.2.4.2, 8.3.2.2, 8.4, 10.3, 11.5, 13.3.1, 14.4, 15.1.1, 15.4.4, 15.5, 15.12).

recent and current filings and other documents that refer to specific sections of the GO. We reserve consideration of such revisions to the future, after the first round of implementation efforts have been completed, and to a time when there are more substantial changes to be made to the GO than are adopted here.

Further, an enforcement action may arise that includes one or more periods up to December 20, 2004. It is useful at this relatively early stage of the program to clearly include the specific standards that applied up to that date.

Finally, the GDS serve a useful purpose at this early stage of the program to document the development of Standards by the Committee, and implementation and enforcement by the Commission. As we have said, and repeat: “we reject the proposition that the Committee must adopt, and the Commission must implement and enforce, only detailed, specific, and itemized standards.” (D.04-05-018, *mimeo.*, p. 23.) In that context, GO 167 § 4 unambiguously states how and where the GDS have been incorporated, and the effective date.

4.2. Reconsideration of Jurisdiction, Role of Guidelines, Enforcement, Confidentiality

Second, AES, Reliant, and WCP “respectfully urge the Commission to consider, or more precisely to reconsider, the points made in these comments about the need to modify GO 167 on the issues of jurisdiction, the role of guidelines, enforcement and confidentiality.” (Comments dated April 1, 2005, p. 14.) AES, Reliant, and WCP recommend changes in the following specific sections: GO 167 § 10.1 (Provision of Information), §10.2 (Authorization for Release of Information), § 11.0 (Audits, Inspections, and Investigations), § 11.2 (Interviews and Testimony), § 11.3 (Tests and Technical Evaluations), § 13.0 (Commission Proceedings), and § 15.4 (Confidentiality). In support, they say

changes are necessary based on their recommendations with respect to: a better description of Commission process, privilege, waiver of privilege, due process, protection against self-incrimination, use of protected materials, and confidentiality.

We have adequately addressed these concerns and recommendations in sections above (e.g., § 3.2 role of guidelines, § 3.5 jurisdiction, § 3.6 enforcement, § 3.7 confidentiality), as well as in prior decisions. We have determined that GO 167 satisfactorily explains the Commission's implementation and enforcement of Operation and Maintenance Standards, and that GO 167 contains the proper balance between competing interests regarding confidentiality, public access to information, and related concerns. We are not persuaded to make changes in these areas.

Finally, we address two points raised by AES, Reliant, and WCP regarding tests. First, they assert that requiring a GAO to pay all liabilities resulting from tests interferes with normal operation of tort law and insurance policies. To the contrary, this assertion is based on an excessively broad and unreasonable reading of GO 167 § 11.3. This section specifies that the GAO incurs test costs and liabilities, except for the cost of CPSD staff. That is, the Commission's costs are limited to those of CPSD staff. The GAO, however, may recover costs and transfer liabilities as otherwise appropriate and consistent with law and insurance policies.

Finally, they say a GAO should not be placed in the position of responding to CPSD for a test if that would conflict with its obligations with respect to the CAISO. We have already dealt with their concerns regarding coordination with the CAISO. (D.04-05-018, *mimeo.*, p. 36, Attachment B, pp. 10-11.) No further

guidance is needed from the Commission, and no changes in GO 167 are warranted.

5. Future Process

We conclude by adopting an approach for possible continuing program development. We do so in the following context.

The Committee adopted operation and maintenance standards for California's electric generation facilities after considerable work over nearly two years. The Commission adopted GO 167 after long and careful consideration over the same period. GO 167 is now the regulatory structure for implementing and enforcing the state's operation and maintenance standards. Stakeholders are now gaining actual experience with GO 167.

By ruling dated March 17, 2005, parties were asked whether or not it might be useful, within this adopted structure and based on stakeholders' actual experiences, to: (1) examine ways to mitigate what might otherwise become future conflicts in implementation and enforcement, and (2) make incremental improvements in the program to increase benefits and reduce costs. In particular, parties were asked whether or not they would be interested in the use of alternative dispute resolution methods to examine these ideas, and specifically whether they would be interested in mediation.

A PHC was held on April 12, 2005 to hear from parties. Responses were generally positive, although several parties believe any such efforts would be more productive after summer 2005. These stakeholders recommend the additional time in order to permit GAOs to complete existing work in compliance with GO 167 (e.g., Operation Plan Summaries), complete necessary work for the summer operating season, and gain additional actual experience under GO 167. This is a reasonable proposal.

5.1. Adopted Process

We adopt the following process and goals. This proceeding will be closed (except for consideration of applications for rehearing), but we direct that the Chief ALJ make an ALJ Division mediator available to respondents and parties within 30 days of the date this decision is mailed. The designated mediator shall contact respondents and parties periodically thereafter to determine if and when there is sufficient interest to commence mediation. Absent a consensus to begin earlier, the mediation shall begin on a day to be specified by the mediator in October 2005. The goals include examining preventative conflict resolution and incremental program improvements within the structure of GO 167, not re-litigation of GO 167.

The mediation will be voluntary and confidential. It will include CPSD and those who wish to participate (e.g., GAOs, including but not limited to respondents to this proceeding; other parties to this proceeding). Further, unless participants agree otherwise, it will be time-limited. Specifically, the mediator will be available for a period of five days, absent explicit approval of the Chief ALJ for a longer period. The mediator should periodically inform the Commission's President of the status (not the substance) of the mediation, and should inform the President when the mediation has concluded (but not report on the substance or the particulars of any conclusion).

5.2. Neutrality of Mediator

Elk Hills expresses concern that a Commission-appointed mediator might be viewed as having a difficult time staying neutral between CPSD and GAOs. This might discourage stakeholders from participating, according to Elk Hills. Elk Hills recommends that the Commission give participants the option of appointing a neutral from outside the Commission, with associated expenses

paid by participants who request the outside mediator, and without Commission obligation to pay any such expenses.

Commission decision-makers, including ALJs and Commissioners, are necessarily neutral in all matters before the Commission. Commission decision-makers routinely hear and decide matters involving “staff” and “others” with opposing or different views and recommendations.¹⁸ Commission decision-makers recuse themselves as necessary, and they may be removed for bias, prejudice or interest in the proceeding. (See, for example, adopted Commission decisions in which a Commissioner declines to participate due to a conflict; also see Article 16 of the Commission’s Rules of Practice and Procedure.) We find nothing particularly unique about the mediation process offered here.

Nonetheless, the mediation is voluntary. If participants are sufficiently hesitant for any reason, the mediation with a Commission-appointed mediator need not proceed. Parties may agree to hire an outside mediator if they choose. We encourage parties to take advantage of the limited Commission resources offered for their use here, but there is no obligation to do so. We also encourage parties to address concerns about neutrality directly with the mediator (whether Commission-appointed or private). Parties can decline to proceed if not sufficiently assured that the mediator is neutral.

¹⁸ For example, rate cases, enforcement actions, and other matters may be addressed by both “staff” and “others.” Staff can include, but is not limited to, CPSD, Office of Ratepayer Advocates, Energy Division (e.g., protested advice letters), and Telecommunications Division (e.g., resolutions). Others can include, but are not limited to, utilities, QFs, GAOs, energy service providers, individual customers, customer groups (e.g., California Manufacturers and Technology Association), and other government entities (e.g., California Energy Commission).

6. California Environmental Quality Act

The California Environmental Quality Act (CEQA) requires that public agencies prepare an environmental impact report whenever the discretionary approval of a proposed project may cause significant adverse impacts on the environment.¹⁹ Certain classes of activities have been determined not to have a significant effect on the environment and are exempt from CEQA.²⁰ One of these categorical exemptions applies to the operation and maintenance of existing electric power generation facilities.²¹

The modifications to GO 167 adopted herein for data collection are exempt from CEQA since this pertains to operation and maintenance of existing electric power generating facilities. The adopted mediation process is exempt from CEQA since this pertains to the use of a process regarding operation and maintenance of existing electric generation facilities. Moreover, to the extent data collection or regulatory process apply to a new facility, the new facility will be subject to applicable CEQA review when development of the facility is proposed. As a result, we direct the Executive Director to file a Notice of Exemption indicating this determination.

7. Close Proceeding

All items identified in the Scoping Memos have now been addressed and resolved. This proceeding is closed for all identified issues, and remains open only for the consideration of applications for rehearing.

¹⁹ Cal. Pub. Res. Code § 21002.1 (West 2003).

²⁰ CEQA Guidelines § 15300.

²¹ *Id.*, § 15301(b).

8. Comments on Draft Decision

On July 22, 2005, the draft decision of Commissioner Michael R. Peevey was filed and served on parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Commission's Rules of Practice and Procedure. Comments were filed and served on August 11, 2005, by Indicated GAOs, Elk Hills, IEP, and CPSD. Reply comments were filed and served on August 16, 2005, by PG&E and CPSD. We incorporate changes to the draft decision based on comments and reply comments, as appropriate. Consistent with our rules, we give no weight to comments which fail to focus on factual, legal or technical errors; fail to make specific references to the record; or merely reargue positions already stated. (Rule 77.3 of the Commission's Rules of Practice and Procedure.)

9. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner. John E. Thorson and Burton W. Mattson are the assigned ALJs.

Findings of Fact

1. GO 167 currently neither specifies the necessary data nor establishes the reporting cycles for information regarding nuclear powered generation facilities and QFs, as required by § 761.3(d).
2. As recommended in the alternative by SCE, utilities may file data on nuclear powerplants with the Commission that they file with CAISO to fulfill the requirements of § 761.3(d)(1).
3. The filing by utilities with the Commission of nuclear powerplant data that they also file with the CAISO will be reasonably simple and direct, will not burden the CAISO, can be done at the same time the data is given to the CAISO, is in line with the responsibilities in § 761.3(d)(1) for the owner or operator (not

the CAISO) to report the data, and allows utilities to clearly identify data they believe to be confidential.

4. The difficulties identified by PG&E and SCE regarding QF data can be overcome by adopting a streamlined approach which will sufficiently differentiate who must file data with whom and when; and disputes regarding reporting duties under the streamlined approach can begin to be resolved soon by requiring each electrical corporation to serve a preliminary report by November 1, 2005, on each affected QF (plus service on CPSD, Oversight Board, and CAISO) stating whether or not the electrical corporation believes it will be able to submit the report due March 31, 2006, to the Commission and the Oversight Board, or whether the QF will need to make that report by March 31, 2006, directly to the Oversight Board and the CAISO.

5. An annual cycle for QF data is a reasonable timeframe for data collection.

6. For logbooks at new powerplants, and when logbook systems are upgraded over time to electronic database systems, focusing on minimum requirements accomplishes most of the Commission's needs without adopting a common logbook format as such.

7. No new facts or policies are presented that justify continuing this proceeding for further inquiry into, or modification to GO 167 regarding, the Operation Plan Summary, role of Guidelines, OS 22, jurisdiction, enforcement, confidentiality or technical modifications, and all issues identified in the Scoping Memos are now resolved.

8. Deleting GO 167 § 4 would require a wholesale renumbering of the GO and Appendices that would be disruptive to stakeholders and current efforts to initiate activities under the new GO; would not as clearly indicate the Standards in effect for the purposes of any enforcement action which might arise including

one or more periods before December 20, 2004; and would not as clearly document the development of Standards by the Committee, with implementation and enforcement by the Commission, at this early stage of the program.

9. No respondent or party stated opposition to a voluntary, confidential and time-limited alternative dispute resolution process after this proceeding is closed for the purposes of examining preventative conflict resolution and incremental program improvement within the structure of GO 167.

Conclusions of Law

1. GO 167 should be modified to include minimum requirements for logbooks (§ 5.7), add certain data requirements (§ 10.3.5 for nuclear facilities, § 10.3.6 for QFs), and clarify effective dates (§ 15.12), as shown in Attachment A.

2. The reporting cycles for nuclear powerplant data should be aligned with those used by the CAISO to the fullest extent feasible, and the information provided to the Commission should be the same as that given to the CAISO or, if different, should be identified as different with a brief summary of the differences.

3. Each electrical corporation should file a report annually with CPSD, the Oversight Board, and CAISO which (a) lists the QFs with whom the electrical corporation had a contract for part or all of the prior calendar year; (b) identifies whether or not the specified information, in the view of the electrical corporation, was provided by the QF to the electrical corporation pursuant to a contract; and (c) includes the specified information where appropriate.

4. The electrical corporation should file its annual report regarding QF data not only with CPSD but also with the Oversight Board and CAISO so that the

Oversight Board and CAISO know whether or not they should expect data to be filed by the QF pursuant to § 761.3(d).

5. The electrical corporation should serve a cover letter and its annual report regarding QF data on each QF which the electrical corporation determines did not provide the specified information pursuant to contract so that the QF is informed of the QF's reporting obligation, and has a timely opportunity to resolve any disagreements with the electrical corporation; to facilitate the effort, each electrical corporation should serve a preliminary report by November 1, 2005, on each affected QF subject to GO 167 § 10.3.6, with service on CPSD, Oversight Board, and CAISO, as provided herein.

6. The QF data should be reported on an annual cycle beginning March 31, 2006.

7. The Commission should not adopt a general rule regarding the admissibility of communications during audits and inspections as evidence in formal proceedings but leave such determinations to the facts and laws in a specific proceeding.

8. The title of GO 167 should not be revised as proposed in the March 17, 2005 Ruling.

9. Regarding technical modifications to GO 167, the additional comment cycle recommended by AES, Reliant, and WCP should not be adopted, nor should modifications be made in the specific subject areas they identified.

10. The GDS should not be deleted from GO 167 at this time.

11. GO 167 § 11.3 requires that the GAO will pay all costs and liabilities resulting from certain tests or technical evaluations (except for CPSD's staff expenses), but does not prevent a GAO from in turn seeking to recover costs and

transfer liabilities as may be appropriate and consistent with law and insurance policies.

12. A mediation process should be adopted; the Chief ALJ should make an ALJ Division mediator available within 30 days of the date this order is mailed; the mediation should include exploration of preventative conflict resolution and incremental program improvements within the structure of GO 167; the mediator should be available to parties for five days (absent an explicit approval of the Chief ALJ for a longer duration); and the mediation should begin as soon as parties are ready and able but no later than one day during October 2005.

13. The Executive Director should file a Notice of Exemption from CEQA regarding the matters adopted herein.

14. Consistent with our prior orders, the Executive Director should serve this decision on the CAISO with a request that the CAISO submit the changes and clarifications adopted herein to the FERC for approval as amendments to the CAISO's tariff, to the extent these changes and clarifications affect those tariffs.

15. This proceeding should be closed.

16. This order should be effective immediately so that data filing requirements adopted herein may commence without delay, reasonable certainty may be provided to stakeholders regarding matters addressed herein, and the mediation process may begin as soon as parties are ready to engage in that process.

FINAL ORDER

IT IS ORDERED that:

1. The amendments to General Order (GO) 167 stated in Attachment A are adopted.
2. By November 1, 2005, each electrical corporation shall serve a preliminary report on each qualifying facility (QF) subject to GO 167 § 10.3.6, with a copy also served on the Director of the Commission's Consumer Protection and Safety Division, the Oversight Board, and the California Independent System Operator (CAISO). The preliminary report shall state whether or not the electrical corporation believes it will be able to submit the report due March 31, 2006, to the Commission and the Oversight Board, or whether the QF will need to make that report by March 31, 2006, directly to the Oversight Board and the CAISO.
3. The Chief Administrative Law Judge (ALJ) will make an ALJ Division mediator available within 30 days of the date this order is mailed. The mediator will follow the guidance stated in this order to the extent feasible and reasonable, and will convene the first day of mediation no later than one day in October 2005. The mediator will be available for the purposes of mediation for up to five days, unless the Chief ALJ explicitly approves a longer period.
4. The Executive Director will file a Notice of Exemption from the California Environmental Quality Act regarding the matters in this order.
5. The Executive Director will forward this decision to the CAISO with a request that the CAISO submit the changes and clarifications adopted herein to the Federal Energy Regulatory Commission for approval as amendments to the CAISO's tariff, to the extent these changes and clarifications affect those tariffs.

6. The Executive Director will serve a notice of this decision on the owner or operator of each electric generation facility subject to Pub. Util. Code § 761.3 not already on the service list of this proceeding.

7. This proceeding is closed (except for consideration of pending applications for rehearing).

This order is effective today.

Dated August 25, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
JOHN A. BOHN
Commissioners

ATTACHMENT A

R.02-11-039

CHANGES TO GENERAL ORDER 167

Four sections in General Order (GO) 167 are added or changed:

- § 5.7 is added regarding electronic database minimum requirements,
- § 10.3.5 is added regarding nuclear facility data,
- § 10.3.6 is added regarding qualifying facility data, and
- § 15.12 is changed to clarify the effective date of these additions.

Specifically, the sections are added or changed as follows:

5.7 Electronic Database Minimum Requirements. Powerplants which are in the planning stage on the effective date of this subsection, and all future powerplants, shall employ electronic database systems for maintaining plant logbooks, and such systems shall meet the following minimum requirements. When logbooks are updated at an existing powerplant to include electronic database systems, the logbook systems shall meet the following minimum requirements. The minimum requirements are that the logbook electronic database systems are:

5.7.1. Electronically searchable.

5.7.2. Secure (i.e., changes are tracked and documented).

10.3.5. Nuclear Facility Data.

10.3.5.1 As required by Public Utilities Code § 761.3(d)(1)(B), each Generating Asset Owner who owns or operates a nuclear powered generating facility shall file with the Oversight Board and CPSD an annual schedule of maintenance, including repairs and upgrades, for each generating facility. The annual schedule of maintenance shall be filed with CPSD by October 15 for the maintenance scheduled for the following calendar year, and shall be updated quarterly thereafter on the fifteenth day of each January, April and July. The first such schedule shall be filed by October 15, 2005. The filing with CPSD shall be the same as the filing with the ISO (pursuant to Section 2.2 of the ISO's Outage Coordination Protocol or other ISO requirement) or, if different,

shall clearly indicate that it is different and briefly summarize the differences. The owner or operator of a nuclear powered generation facility shall make good faith efforts to conduct its maintenance in compliance with its filed plan and shall report to the Oversight Board and the ISO any significant variations from its filed plan.

- 10.3.5.2 As required by Public Utilities Code § 761.3(d)(1)(C), each Generating Asset Owner who owns or operates a nuclear powered generating facility shall report on a monthly basis to the Oversight Board and CPSD all actual planned and unplanned outages of each facility during the preceding month. The report shall be filed with CPSD by the 10th day of each month for the period covering the immediately prior month (e.g., filed by September 10 for outages in August), with the first report filed by September 10, 2005. The filing with CPSD shall be the same as the filing with the ISO (pursuant to the ISO's Outage Coordination Protocol, or other ISO requirement) or, if different, shall clearly indicate that it is different and briefly summarize the differences. The owner or operator of a nuclear powered generating facility shall report on a daily basis to the Oversight Board and the ISO the daily operational status and availability of each facility.

10.3.6. Qualifying Facility Data: Pursuant to Public Utilities Code § 761.3(d)(2)(B):

- 10.3.6.1. An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, with a name plate rating of 10 megawatts or greater, shall report the information specified below (§ 10.3.6.4) to the Oversight Board and CPSD. The specified information shall be reported by the electrical corporation only if the information is provided to the electrical corporation by the qualifying facility pursuant to a contract.
- 10.3.6.2. Each qualifying facility with a name plate rating of 10 megawatts or greater shall report the information specified below (§ 10.3.6.4) directly to the Oversight Board and the ISO if the information is not provided to an electrical corporation by the qualifying facility pursuant to a contract with the electrical corporation.

- 10.3.6.3. Each electrical corporation shall file a report with CPSD, the Oversight Board and ISO by the thirty-first day of March covering the period of the immediately prior calendar year (e.g., January 1 through December 31). The first report shall be filed by March 31, 2006, and be updated annually thereafter on each subsequent thirty-first day of March. The report shall list each qualifying facility with which the electrical corporation had a contract for part or all of the prior calendar year. The list shall identify whether or not the information specified below (§ 10.3.6.4) was provided by the qualifying facility to the electrical corporation pursuant to a contract. If so, the electrical corporation shall include the specified information in its report. If not, the electrical corporation need not provide the specified information in its report, but the qualifying facility shall provide the information directly to the Oversight Board and the ISO. On the same day the report is filed with CPSD, the electrical corporation shall serve a copy of its report on each qualifying facility which it determines did not provide the specified information pursuant to a contract along with a cover letter. The cover letter shall inform the qualifying facility that the qualifying facility must provide the data specified below (§ 10.3.6.4) directly to the Oversight Board and ISO pursuant to Pub. Util. Code § 761.3(d)(2)(B), or pursue the matter with the electrical corporation within 30 days of the date of the letter.
- 10.3.6.4. Specified Information: The maintenance schedules for each qualifying facility, including all actual planned and unplanned outages of the qualifying facility, and the daily operational status and availability of the qualifying facility.

- 15.12. Effective Date. This General Order is effective on the third day following the mailing of the Commission's decision adopting this General Order. The initial Commission decision adopting this General Order was mailed May 7, 2004, and the General Order became effective May 10, 2004. Changes to this General Order are effective on the third day following the mailing of the Commission's decision adopting these changes. This includes changes regarding Generator Maintenance Standards and Generator Operation Standards (Sections 7.0, 8.0, Attachment D and Attachment E, plus related parts in Sections 2, 3, 4 and 15), logbook Electronic Database

Minimum Requirements (Section 5.7), and Generating Asset
Information (Sections 10.3.5 and 10.3.6.)

(END OF ATTACHMENT A)

ATTACHMENT B

R.02-11-039

**PUBLIC UTILITIES CODE §§ 761.3(d):
INFORMATION ON NUCLEAR POWERPLANTS
AND QUALIFYING FACILITIES**

1. Nuclear Powered Generating Facilities: Public Utilities Code § 761.3(d)(1) requires certain information on nuclear powerplants:

- “(A) Except as otherwise provided in this subdivision, this section shall not apply to nuclear powered generating facilities that are federally regulated and subject to standards developed by the Nuclear Regulatory Commission, and that participate as members of the Institute of Nuclear Power Operations.
- (B) The owner or operator of a nuclear powered generating facility shall file with the Oversight Board and the commission an annual schedule of maintenance, including repairs and upgrades, updated quarterly, for each generating facility. The owner or operator of a nuclear powered generating facility shall make good faith efforts to conduct its maintenance in compliance with its filed plan and shall report to the Oversight Board and the Independent System Operator any significant variations from its filed plan.
- (C) The owner or operator of a nuclear powered generating facility shall report on a monthly basis to the Oversight Board and the commission all actual planned and unplanned outages of each facility during the preceding month. The owner or operator of a nuclear powered generating facility shall report on a daily basis to the Oversight Board and the Independent System Operator the daily operational status and availability of each facility.

2. Qualifying Facilities: Public Utilities Code § 761.3(d)(2) requires certain information on qualifying facilities:

- “(A) Except as otherwise provided in this subdivision, this section shall not apply to a qualifying small power production facility or a qualifying cogeneration facility within the meaning of Sections 201 and 210 of Title 11 of the federal Public Utility Regulatory Policies Act of 1978 (16 U.S.C. Secs. 796(17), 796(18), and 824a-3), and the regulations adopted pursuant to those sections by the Federal Energy Regulatory Commission (18 C.F.R. Secs. 292.101 to 292.602, inclusive), nor shall this section apply to other generation units installed, operated, and maintained at a customer site, exclusively to serve that customer's load.
- (B) An electrical corporation that has a contract with a qualifying small power production facility, or a qualifying cogeneration facility, with a name plate rating of 10 megawatts or greater, shall report to the Oversight Board and the commission maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility. Each facility with a name plate rating of ten megawatts or greater shall be responsible for directly reporting to the Oversight Board and the Independent System Operator maintenance schedules for each facility, including all actual planned and unplanned outages of the facility and the daily operational status and availability of the facility, if that information is not provided to the electrical corporation pursuant to a contract.”

(END OF ATTACHMENT B)